IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16681 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTIBHAI OKHAJI BHATI THRO' PAH RAJENDRAKUMAR MOHANLAL

Versus

GOVERNMENT OF GUJARAT

Appearance:

1. Special Civil Application No. 16681 of 2004

MR KM SHETH for Petitioner No. 1

MR KP Raval, learned A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 11/01/2005

ORAL JUDGEMENT

#. Rule. Mr.K.P.Raval, learned A.G.P. waives service of rule on behalf of the respondent. With the consent of

the parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Collector, Banaskantha dated 10.11.2003 and 13.12.2004 in fixing the premium with regard to the land in question considering the market value of the land in question at Rs.190/- per sq.mtr.

#. It appears from the record that land bearing survey no. 200 paiki admeasuring 3 acres and 32 gunthas was new tenure land and the petitioner wanted to lift the ban and convert the land in question from new tenure to old tenure and therefore the petitioner submitted the appropriate application before the Collector, Banaskantha. By communication dated 10.l1.2003 on the basis of the price determined by the District Land Valuation Committee, the petitioner was directed to pay premium at the rate of 80% of the market value i.e. Rs.20,91,408/considering the market value of the property at Rs.170/per sq.mtr. Accordingly, the petitioner was directed to give his consent. It appears that being aggrieved and dissatisfied with the aforesaid communication dated 10.11.2003, the petitioner preferred the revision application before the State Government i.e. Revenue Department, State of Gujarat on 05.06.2004 / 08.06.2004 and on the basis of the decision taken by the State Government, the Collector, Banaskantha by communication dated 13.12.2004, directed the petitioner to pay premium of Rs.23,37,456/- considering the market value of the property in question at Rs.190/- per sq.mtr. Hence, the petitioner has challenged both the aforesaid orders.

#. Mr.K.M.Sheth, learned advocate appearing on behalf of the petitioner, has submitted that it appears that the Collector, Banaskantha has passed the order dated 13.12.2004 on the basis of the order passed by the Revenue Department, State of Gujarat in revision application filed by the petitioner but the petitioner is not given any copy of the said order nor even the petitioner was at any point of time heard by the revisional authority i.e. the Revenue Department, State of Gujarat. He submitted that when the petitioner has challenged the valuation fixed by the Collector at Rs.170/- per sq.mtr., the revisional authority in the revision application filed by the petitioner could not have enhanced the valuation and at the most the revisional authority could have dismissed the revision

application. He further submitted that even fixation of the market value at Rs.170/- is also exorbitant and is not on the basis of the correct market value.

#. In response to the notice issued by this court, Mr.K.P.Raval, learned A.G.P. appears on behalf of the respondents. He has produced on record one communication / order dated 02.11.2004 issued by the Section Officer, Revenue Department, State of Gujarat and according to him, that is the decision on the revision application filed by the petitioner against the communication / order dated 10.11.2003. When the specific query was raised, whether before passing the impugned order dated 22.11.2004 fixing the market value of the land in question at Rs.190/- sq.mtr., the petitioner was heard or not and/or the petitioner is communicated the said order or not, Mr.Raval has submitted that there is nothing on record to show that the petitioner was, at any point of time, heard by the revisional authority. Considering the fact that before passing the impugned order dated 22.11.2004 in the revision application filed by the petitioner, the petitioner is not given opportunity of being heard and to represent his case and to point out the correct valuation on the basis on which the premium is to be fixed, the impugned order passed by the State Government i.e. Revenue Department, State of Gujarat is required to be quashed and set aside. Consequently, the communication / order passed by the Collector, Banaskantha dated 13.12.2004 by which the petitioner is directed to pay premium considering the market value of the property in question at Rs.190/- per sq.mtr. is also required to be quashed and set aside as the same is based upon the order passed by the State Government dated 22.11.2004 which is as stated hereinabove is required to be quashed and set aside.

#. For the reasons stated above, the order passed by the State Government i.e. Revenue Department, State of Gujarat dated 22.11.2004 in revision application filed by the petitioner against the order / communication issued by the Collector, Banaskantha dated 10.11.2003 is hereby quashed and set aside as the same is in breach of the principles of natural justice. Consequently, the order / communication issued by the Collector, Banaskantha dated 13.12.2004 fixing the premium on the basis of the communication / order passed by the State Government dated 22.11.2004 is also quashed and set aside. The matter is remanded to the revisional authority i.e. Revenue Department, State of Gujarat for passing order afresh on its own merits and in accordance with law on the revision application filed by the petitioner against

the communication / order dated 10.11.2003 with regard to the land in question after giving opportunity to the petitioner. It will be open for the petitioner even to file additional evidence showing the correct market value which may also be considered by the revisional authority while passing the impugned order. Such exercise is required to be done by the revisional authority within four months from the date of the receipt of the writ of this order.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)